

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Streamlining Deployment of Small)	
)	
Cell Infrastructure by Improving Wireless)	WT Docket No. 16-421
)	
Facilities Sitting Policies)	

Comments of the Illinois Department of Transportation

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The State of Illinois has one of the most diverse, multimodal transportation systems in the nation. A system that includes the fourth-largest roadway system, third-largest interstate system, second-largest rail freight system, third-largest public transportation system, a growing intercity passenger rail network, and one of the busiest airport systems in the world.

The Illinois Department of Transportation (IDOT) is responsible for the planning, coordination, construction and maintenance or operation of Illinois' extensive public transportation network, which encompasses highways and bridges, highway safety, public transportation, aviation and rail freight and passenger rail transportation. IDOT is responsible for ensuring that the state's surface and aviation programs meet federal and state policies, program standards and requirements, while providing the highest level of safety for the efficient transportation of people and goods.

For reasons set forth below and in the context of IDOT's responsibilities as noted above, IDOT opposes Mobilitie's, LLC ("Mobilitie") Petition for Declaratory Ruling from the Commission to interpret certain sections of Title 47 U.S.C. (47 U.S.C. § 253 (c)) – Removal of barriers to entry - and for any modification of the Commission's 2009 Declaratory Ruling and 2014 Infrastructure Order.

IDOT suggests that a Declaratory Ruling from the Commission regarding the questions posed in Mobilitie's Petition dated November 15, 2016, and the Commission's subsequent request for comments to address those issues, is impulsive, premature and unwarranted as there is no quantifiable demonstrated need to amend or adjust existing rules at this time. Furthermore, IDOT dissuades the Commission from re-opening any preceding statutory interpretations in regards to the deployment of small cell infrastructure/wireless infrastructure.

IDOT suggests that any judgment from the Commission, the wireless industry and/or state and local municipalities must be based upon data-driven empirical analysis of the impact(s) to said industry and other public/private entities. Due to wide-ranging impacts to all parties involved and the rippling effect of unintended consequences, it is suggested that the Commission embark upon an investigatory period of substantial duration (several years perhaps) to data collect and monitor these nascent technologies and practices so that a balanced and thoughtful approach can be examined prior to any rulings.

Of paramount importance to IDOT is that public rights of way be safely operated and maintained. IDOT, with stewardship responsibilities over state public rights of way, submits that such safety on public rights of way could be compromised if the expansion of authority, placement, and construction of wireless facilities is left unchecked and/or said expansion pre-empts state and local authorities. The widespread deployment of small cells and distributed antenna systems (DAS) to meet coverage needs in an already congested right of way, for example, will lead to increased costs to manage rights of way full of utilities, e.g. increased site inspections and increased maintenance costs due to mowing and property maintenance. Anchors and stabilization devices such as guy-wires may contribute to employee accidents and require routine inspections. Aside from the placement of pole towers (any placement of towers needs to address a number of risk factors, e.g. is the tower obstructing views, what are the aesthetics?), other questions arise regarding these types of wireless facilities such as pole tower composition, pole foundation, and pole height. There is potential for an increase in fatalities due to vehicular collisions with pole towers.

Also of concern to IDOT is the aesthetics of the placement of pole towers. Aesthetics is the art of putting utilities in locations where they blend in with the surrounding landscape and environment. Ubiquitous placement of pole towers will make a noticeable visual impact on

community aesthetics. Thoughtful approaches and standardization is needed to improve the aesthetics of these emerging technologies.

Authority over rights of way in Illinois is granted to the state and county highway authorities pursuant to Article 9, General Highway Provisions, of the Illinois Highway code which states, in pertinent part:

- (a) No ditches, drains, track, rails, poles, wires, pipe line or other equipment of any public utility company, municipal corporation or other public or private corporation, association or person shall be located, placed or constructed upon, under or along any highway, or upon any township or district road, without first obtaining the written consent of the appropriate highway authority as hereinafter provided for in this Section.
- (b) The State and county highway authorities are authorized to promulgate reasonable and necessary rules, regulations, and specifications for highways for the administration of this Section.ⁱ

As previously noted, there are a multitude of factors IDOT and other highway authorities must consider when permitting utilities upon rights of way. Hence, the aforementioned enactment of specific Illinois state law governing the consent, rules/regulations and use by public utilities of rights of way grants authority to state and local highway authorities because those agencies with jurisdiction over their respective rights of way are the best equipped to make those local decisions. Section 253 (c), Title 47 U.S.C., appears to affirm this view,

“Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”

That is, IDOT contends that existing federal law indicates that the Commission recognizes the importance of State and local governments retaining authority over public rights of way.

Additionally, 23 CFR § 645.201 prescribes policies and procedures for accommodating utility facilities and private lines on the right of way of Federal-aid or direct Federal highway projects. The Mobilitie Petition appears to encroach upon State and local authority granted by the Code of Federal Regulations (“Code”). The following Code sections allow for the discretion of state departments of transportation in the accommodation of utilities as long as public safety is not compromised.

Specifically, 23 CFR 645.§ 205 notes that:

- (a) it is in the public interest for utility facilities to be accommodated on the right-of-way of a Federal-aid or direct Federal highway project *when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State or local laws or regulations* [emphasis added].

Furthermore, regarding the paramount importance of highway safety, 23 CFR § 645.209 (c)(3) continues to provide flexibility to state departments of transportation regarding the adoption of proper and adequate policies to ensure public safety when it states:

- (3) Nothing in this part shall be construed as *prohibiting a transportation department from adopting a more restrictive policy* than that contained herein with *regard to longitudinal utility installations* [emphasis added] along freeway right-of-way and access for constructing and/or for servicing such installations.

For the aforementioned reasons, IDOT submits these comments in opposition to Mobilitie’s Petition for a Declaratory Ruling and per the Commission’s request per WT Docket No. 16-421.

Additionally, IDOT supports and concurs with comments in opposition of Mobiltie's Petition submitted by the American Association of State Highway and Transportation Officials (AASHTO)ⁱⁱ.

Sincerely,



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Secretary
Illinois Department of Transportation

ⁱ 605 ILCS 5/9-113.

ⁱⁱ AASHTO is a nonprofit, nonpartisan association representing highway and transportation departments in the 50 states, the District of Columbia, and Puerto Rico.